

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JAMES P. DEFAZIO, et al.,

Plaintiff,

v.

HOLLISTER, INC., et al.,

Defendants.

NOS. CIV. 2:04-1358 WBS GGH  
2:05-0559 WBS GGH  
2:05-1726 WBS GGH  
CONSOLIDATED

ORDER RE: COSTS

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After a fifteen-day bench trial, the court found in favor of all defendants on all claims and judgment was entered on April 6, 2012. (Docket Nos. 664, 665.) Plaintiffs appealed and the Ninth Circuit affirmed this court's decision on May 15, 2015. (Docket No. 697.) Pursuant to the Ninth Circuit's mandate, its judgment took effect on June 8, 2015. (Docket No. 698.) On June 22, 2015, defendants filed a Bill of Costs limited to the costs incurred on appeal, which total \$15,789.50. (Docket No. 700.)

1           Plaintiffs' sole objection to defendants' Bill of Costs  
2   is that it is untimely under Eastern District Local Rule 292  
3   because it was filed over three years after this court entered  
4   judgment. Local Rule 292's deadline for filling a Bill of Costs  
5   "[w]ithin fourteen (14) days after entry of judgment" logically  
6   applies only when costs were incurred in the district court prior  
7   to entry of judgment. Here, defendants seek only costs incurred  
8   in defending that judgment on appeal and defendants thus had  
9   fourteen days after the issuance of the Ninth Circuit's mandate  
10   to seek those costs. See E.D. Local R. 292(b) ("Within fourteen  
11   (14) days after entry of judgment or order under which costs may  
12   be claimed, the prevailing party may serve on all other parties  
13   and file a bill of costs conforming to 28 U.S.C. § 1924.")  
14   (emphasis added). Defendants never sought and do not now seek  
15   costs incurred to defend this case in the district court.  
16   Defendants therefore timely filed their Bill of Costs to recover  
17   costs incurred on appeal.

18           Federal Rule of Appellate Procedure 39 provides that  
19   costs are taxed against the appellant if the judgment is  
20   affirmed, and the Ninth Circuit mandate taxed costs against  
21   plaintiffs in the amount of \$499.50. (Docket No. 698.) Federal  
22   Rule of Appellate Procedure 39(e) also provides that costs for  
23   the reporter's transcript and the fee for filling the appeal may  
24   be taxed in the district court. In their Bill of Costs,  
25   defendants seek costs only for (1) the reporter's transcripts;  
26   (2) the filing fee for the appeal; and (3) the costs taxed by the  
27   Ninth Circuit. After reviewing the bill, and in light of the  
28   fact that plaintiffs have objected only to the timeliness of

1 defendants' request, the court finds the requested appeal costs  
2 are reasonable. Accordingly, costs of \$15,789.50 are taxed  
3 against plaintiffs.

4 IT IS SO ORDERED.

5 Dated: August 31, 2015



6 WILLIAM B. SHUBB

7 UNITED STATES DISTRICT JUDGE  
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